

## **REMARKS**

In response to the final Office Action dated October 14, 2010, the Assignee respectfully requests continued examination and reconsideration based on the above amendments and on the following remarks.

Claims 1, 3-18, 20-22, 25, 27-30, and 32 are pending in this application. Claims 2, 19, 23-24, 26, and 31 have been, or previously were, canceled without prejudice or disclaimer.

### **Rejection of Claims under § 102 (e)**

The Office rejected claims 1, 3-18, and 20-23 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 7,212,979 to Matz.

First, claim 23 has been canceled, so the rejection of claim 23 is moot.

Next, the rejection of the remaining claims has been rendered moot by amendment. Claims 1, 3-18, and 20-22 have been amended to recite features that are similar to independent claim 25, which is not rejected. Independent claim 1, for example, has been amended to recite “*when the command is a channel change at a viewer appliance, then immediately upon receipt concurrently forwarding the command from the viewer appliance for remote execution to a new stream of programming.*” Independent claim 1 has been amended to recite “*when the command is not the channel change, then eliminating local storage of the command at the viewer appliance by performing in parallel: immediately upon receipt concurrently forwarding the command from the viewer appliance to the remotely located component; and executing the command to alter an aspect of the content being viewed by the viewer.*” Support for these features may be found at least in the as-filed application at page 11, lines 17-25. Independent claims 9 and 18 have been amended to recite similar features.

Claims 1, 3-18, and 20-22, then, cannot be anticipated by *Matz*. Independent claims 1, 9 and 18 have been amended to resemble independent claim 25, which is not rejected. The dependent claims incorporate these features and recite additional features. The Office is thus respectfully requested to remove the § 102 (e) rejection of these claims.

**Rejection of Claims under § 103 (a)**

Claims 25, 27-30, and 32 were rejected under 35 U.S.C. § 103 (a) as allegedly being obvious over U.S. Patent 7,212,979 to *Matz*, which incorporates U.S. Patent 6,983,478 to *Grauch, et al.*

*Matz* and *Grauch*, however, cannot be cited against the pending claims. Documents that would qualify as “prior art” under 35 U.S.C. § 102 (e), 102 (f), or 102 (g) shall not preclude patentability when commonly owned at the time of invention, but, developed by another person. *See* 35 U.S.C. § 103 (c).

Here, both *Matz* and *Grauch* satisfy § 103 (c) and, thus, cannot be used to reject the pending claims. Both *Matz* and *Grauch* are U.S. patents with earlier effective filing dates and different inventive entities. *Matz*, *Grauch*, and this application were also commonly owned at the time of invention by the same assignee (namely, BellSouth Intellectual Property Corporation). The Assignee, then, respectfully asserts that *Matz* and *Grauch* cannot be cited against the pending claims. The Office is thus respectfully requested to remove the § 103 (a) rejection of these claims based on any combination involving *Matz* and *Grauch*.

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If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

**37 C.F.R. § 1.8 CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being electronically transmitted via the USPTO EFS web interface on January 11, 2011.

A handwritten signature in black ink, appearing to read 'S. Zimmerman', with a stylized flourish at the end.

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